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Part V

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4092-5]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document EPA proposes regulations to ban nonessential products releasing class I ozone-depleting substances and require the elimination of emissions from products using class I substances under sections 610 and 608 of the Clean Air Act, as amended. The substances affected by this proposed rulemaking include chlorofluorocarbons (CFCs) and halons.

DATES: If requested by January 23, 1992, EPA will hold a public hearing on this notice on January 31, 1992. The contact person listed below may be called regarding a hearing. Written comments on this notice must be submitted on or before February 18, 1992, if the hearing is not held, or March 2, 1992, if the hearing is held.

ADDRESSES: Comments should be submitted in duplicate to the attention of Air Docket No. A–91–39 at: U.S. Environmental Protection Agency (LE–131), 401 M Street, SW., Washington, DC 20460. The Docket is located in room M–1500, first floor, Waterside Mall and materials relevant to this rulemaking may be inspected from 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Blank at (202) 260–8894, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Problem

The stratospheric ozone layer protects the earth from the penetration of harmful ultraviolet (UV-B) radiation. A national and international consensus has developed that certain industrially produced halocarbons (including chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform) can transport chlorine and bromine to the stratosphere and there contribute to the depletion of the ozone layer. To the extent depletion occurs, penetration of UV-B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

B. Aerosol Ban in 1978

Following initial concerns raised by research scientists Molina and Rowland in 1974 regarding possible ozone depletion from CFCs, EPA and the Food and Drug Administration (FDA) acted on March 17, 1978 (43 FR 11301; 43 FR 11318) to ban the use of CFCs as aerosol propellants in all but "essential applications." During the mid-1970s, use as aerosol propellants constitute over 50 percent of total CFC consumption in the United States. The 1978 ban reduced aerosol use of CFCs in this country by approximately 95 percent, eliminating nearly half of the total U.S. consumption of these chemicals

Some CFC aerosol products were specifically exempted from the ban based on a determination of "essentiality." (See reference Essential Use Determinations-Revised, 1978.) Other pressurized dispensers containing CFCs were excluded from the ban because they did not fit the narrow definition of "aerosol propellant."

In the years following the aerosol ban, CFC use increased significantly in the refrigeration, foam and solvent-using industries. By 1985, CFR use in the United States had surpassed pre-1974 levels and represented 29 percent of total global CFC consumption.

C. Montreal Protocol

EPA evaluated the risks of ozone depletion in Assessing the Risks of Trade Gasses That Can Modify the Stratosphere (1987) and concluded that an international approach was necessary to effectively safeguard the ozone layer. Because releases of CFCs from all areas mix in the atmosphere to affect stratospheric ozone globally, it became clear that efforts to reduce emissions from specific products by only a few nations could quickly be offset by increases in emissions from other nations, leaving the risks to the ozone layer unchanged.

Recognizing the global nature of this issue, EPA participated in negotiations organized by the United Nations Environment Program (UNEP) to develop an international agreement to protect the ozone layer. In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer. The 1987 Protocol called for a freeze in the production and consumption (defined as production plus imports minus exports of bulk chemicals) of CFC–11, –12, –113, –114, –115, and halon 1211, 1301 and 2402 at 1986 levels, and a phased reduction of the CFCs to 50 percent of 1986 levels by 1998. Currently, 71 nations representing over 90 percent of the world's consumption are party to the Protocol.

In its August 12, 1988 final rulemaking (53 FR 30566) EPA promulgated regulations implementing their requirements of the 1987 Protocol through a system of tradable allowances. EPA apportioned these allowances to producers and importers of these "controlled substances" based on their 1986 levels. To monitor industry's compliance with the production and consumption limits, EPA required recordkeeping and quarterly reporting and conducted periodic compliance reviews and inspections.

D. Excise Tax

As part of the Omnibus Budget Reconciliation Act of 1989, the United States Congress levied an excise tax on the sale of CFCs and other chemicals which deplete the ozone layer, with specific exemptions for exports and recycling. The tax went into effect on January 1, 1990 and has operated as an extremely useful complement to EPA's regulations limiting production and consumption. By raising the costs of using virgin controlled substances, the tax has created an added incentive for industry to shift out of these substances and increase recycling activities, and provided a market for alternative chemicals and processes. The original excise tax was amended by the Internal Revenue Service (IRS) in 1991 to include methyl chloroform, carbon tetrachloride and the other CFCs regulated by the amended Montreal Protocol and title VI of the Clean Air Act Amendments of 1990.

E. London Amendments to the Montreal Protocol

In response to overwhelming scientific evidence of increased stratospheric ozone depletion, the Parties to the Protocol passed amendments and adjustments at their second meeting held in London on June 29, 1990 which called for a full phase-out of the regulated CFCs and halons by 2000, a phase-out of carbon tetrachloride and "other CFCs" by 2000 and a phase-out of methyl chloroform by 2005. The Parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbons (HCFCs) as

interim substitutes for CFCs. Partially halogenated HCFCs add much less chlorine to the stratosphere than the fully halogenated CFCs, but still pose some threat to the ozone layer. (See 56 FR 2420; January 22, 1991 for more information on the relative effects of different ozone-depleting substances.

F. Clean Air Act Amendments of 1990, Title VI

On November 15, 1990 the Clean Air Act Amendments of 1990 were signed into law. The requirements in new title VI include phase-out controls similar to those in the London Amendments, although interim targets are more stringent and the phase-out date of methyl chloroform is earlier. Unlike the amended Montreal Protocol, the Clean Air Act also requires regulations restricting the uses of controlled ozone-depleting substances, including provisions to reduce emissions of controlled substances to the "lowest achievable level" in all use sectors, to ban nonessential products, to mandate warning labels, and to establish a safe alternatives program.

G. Subgroup of the Federal Advisory Committee

In the development of this proposed regulation, EPA was assisted by a subgroup of the standing Stratospheric Ozone Protection Advisory Committee (STOPAC). In 1989, EPA established the STOPAC in accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 9(c). The STOPAC consists of members selected on the basis of their professional qualifications and diversity of perspectives and provides balanced representation from the following sectors: Industry and business; academic and educational institutions; Federal, state and local government agencies; non-government and environmental groups; and international organizations. Since its formation, the STOPAC has provided advice and counsel to the Agency on policy and technical issues related to the protection of the stratospheric ozone layer.

In 1990, members were asked to participate in subgroups of the STOPAC to assist the Agency in developing regulations under the new requirement of title VI of the Clean Air Act Amendments of 1990. To date, the Subgroup on Nonessential Products has met twice, reviewing two in-depth briefing packets (contained in Docket A-91-39) and offering comments and technical expertise on the development of today's proposed rule.

II. Requirements Under Section 610

A. Class I Products

Title VI of the Clean Air Act as amended divides the controlled ozone-depleting chemicals into two distinct classes. Class I is comprised of CFCs, halons, carbon tetrachloride and methyl chloroform. Class II is comprised of HCFCs. (See listing notice January 22, 1991; 56 FR 2420.)

Section 610(b) of the Act requires EPA to "identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce."

Section 610(b) (1) and (2) specify products to be prohibited under this requirement, including "chlorofluorocarbon-propelled plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment."

Section 610(b)(3) further requires EPA to include in the prohibition at a minimum "other consumer products" that are determined by EPA to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is instructed to consider the following criteria: "The purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors."

Final regulations for the class I products are required by section 610 to be promulgated within one year after enactment of the Clean Air Act Amendments of 1990 (November 15, 1991) and to take effect 24 months after enactment (November 15, 1992). While final regulations implementing section 610(b) will be published shortly after the statutory deadline, the effective date required by section 610(c) remains unchanged.

B. Class II Products

Section 610(d)(1) states that after January 1, 1994, "it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—(A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance." Section 610(d)(2) authorizes EPA to grant exceptions to the class II ban in certain circumstances.

EPA believes that, unlike the class I ban, the class II ban is self-executing and that consequently EPA is not required to promulgate regulations within one year of enactment under section 610 to implement the class II ban. Section 610(d) bans the sale of the specified class II products by its own terms, without any reference to required regulations. Section 610(c), on the other hand, bans only the sale of nonessential class I products to which the Administrator's regulations issued under section 610(a) implementing section 610(b) apply.[1] EPA believes it has the authority to issue regulations as necessary to implement the class II ban under sections 610 and 301 of the Clean Air Act, as amended, and intends to do so at a later date to establish a procedure for granting exceptions under 610(d)(2). EPA intends to collect more specific information on the use of Class II substances in foams and aerosols in the near future.

C. Medical Products

Section 610(e) states that "nothing in this section shall apply to any medical devices as defined in section 601(8)." Section 601(8) defines "medical device" as "any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner of the Food and Drug Administration; and (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator."

No medical products as defined above are included in the provisions of today's proposal, but regulation of medical products may be considered at a later date under the conditions in this subparagraph.

[1] Although the legislative history of section 610 is unenlightening on this point, the Senate Statement of Managers description of a ban on the venting of refrigerants, which is stated as an outright ban similarly to the phrasing of the class II ban, specifically states that the refrigerant ban is self-executing and will take effect on the stated date even if that date is in advance of EPA regulations implementing the ban. See Cong. Rec. S16948 (daily ed. Oct. 27, 1990) (Chaffee-Baucus Statement of Managers).

D. Relation to Section 608 (Emissions Reduction)

EPA believes that the authority granted under section 608 (National Emission Reduction Program) is relevant to today's proposed rulemaking. Section 608(a)(3) requires EPA to set standards for reducing emissions of controlled substances to their "lowest achievable level," including "requirements to use alternative substances." EPA believes that where products using class I substances have adequate quantities of substitutes readily available, EPA has the authority under section 608 to require reducing emissions of controlled substances to the lowest achievable level of zero. This would amount to an effective ban on the use of controlled substances in those products quite apart from the section 610 ban on nonessential products. EPA believes that the authority under section 608 therefore overlaps with the requirements of section 610 for those use sectors where substitutes are commercially available, and is referencing it here in support of today's proposal to implement section 610.

III. Proposed Rule

EPA today proposes to implement the prohibition required by section 610 on the sale or distribution in interstate commerce of specified class I products and other nonessential products. EPA believes that the term "interstate commerce" in section 610 refers to the product's entire distribution chain up to and including the point of sale to the ultimate consumer. As such, all sale and distribution, including retail sale, would be prohibited as of the effective date of November 15, 1992.

EPA believes that there is sufficient time before the final regulation goes into effect on November 15, 1992 for retailers to liquidate any remaining stocks of prohibited products. EPA requests comment on any barriers that might prevent retailers from liquidating such stocks before the effective date.

A. Specified Class I Products

The prohibition on the sale and distribution of the products specified in section 610(b) (1) and (2) is required at a minimum. EPA believes that the excise tax on CFCs combined with the scarcity created by the limits on production and imports has sufficiently raised the price of CFCs so that it may already be more economical to use substitutes in the products specified by section 610(b) (1) and (2). Furthermore, as the phase-out and tax progress toward the year 2000 the cost of using CFCs will continue to rise, creating an increasing incentive to shift to alternatives. EPA proposes the following definitions of the specified products, both in terms of technical descriptions and commercial examples.

1. CFC-Propelled Plastic Party Streamers

EPA found only one type of product that fits the description "propelled plastic party streamers" in section 601(b)(1). String confetti is a household novelty product comprised of a plastic resin, a solvent, and a propellant mixed together in a pressurized can. When the dispensing nozzle is depressed, blowing action converts the resin into plastic foam streamers and propels them a few feet. Once popular at children's parties, string confetti was commonly known by its commercial name "silly string."

String confetti was originally manufactured using CFC–12 as the blowing agent. However, EPA is unaware of any company that currently uses CFCs in this type of product. The use of CFC–12 in string confetti was not prohibited by EPA's 1978 aerosol ban because technically the CFC also served as an active ingredient in the product and not exclusively as an aerosol propellant. Manufacturers switched initially to hydrocarbon systems but, due to flammability concerns, have since moved to HCFC–22 systems. HCFC–22 is a class II substance with an ozone depletion potential of 0.05 (one twentieth of CFC–12). (See listing notice of ozone depleting substances 56 FR 2420; January 22, 1991.)

Vermont and Minnesota have already passed laws banning the sale of CFC-propelled plastic party streamers. EPA believes that since the tax and the limits on supply will continue to raise the cost of CFCs, it is unlikely that they would again be used to propel string confetti. Nonetheless, as required by the statute, EPA today proposes to prohibit the sale or distribution of any CFC-propelled plastic party streamers.

2. CFC-Propelled Noise Horns

A noise horn is generally regarded as a product from which the high dispensing pressure of a propellant produces a loud piercing sound that can travel long distances. EPA is aware of several products that could fit the description of "noise horns" in section 610(b)(1), including marine safety noise horns, sporting event noise horns, personal safety noise horns, wall-mounted industrial noise horns used as alarms in factories and other work areas, and intruder noise horns as alarms in homes and cars.

Boaters have commonly used noise horns propelled by CFC–12 to meet U.S. Coast Guard Navigation Rules mandating that a signalling device be aboard vessels of all sizes in international and inland waters. One of the largest manufacturers of such "marine safety" noise horns reported that all of its horn products except for the smallest canister (2.1 ounces) had either been reformulated to use HCFC–22 or dropped from the product line. According to this manufacturer, the reason that CFC–12 is still used in its smallest canister is that the Department of Transportation (DOT) has not yet approved a canister of that size to accommodate the different pressure of HCFC–22.

EPA's report Alternative Formulations to Reduce CFC Use in U.S. Exempted and Excluded Aerosol Products (1989) states that as of September 1989, "several manufacturers" of noise horns had switched from CFC–12 to HCFC–22. Noise horns propelled with HCFC–22 meet or exceed all Coast Guard requirements and are available in canisters as small as 4.5 ounces. EPA believes that 4.5 ounce canisters are sufficiently small to satisfy consumer needs for all recreational, boating, automotive and home uses, and should not cost significantly more than the currently available 2.1 ounce size that uses CFC–12. Other alternative propellants for noise horns include HCFC–142b (in a mixture with HCFC–22), hydrocarbons, and hydrofluorocarbon (HFC) –134a. Hydrocarbons have not been commonly used due to flammability concerns. HFC–134a appears promising as a non-chlorinated substitute that unlike HCFC–22 poses no threat to the ozone layer. HFC–134a has recently become available in limited commercial quantities.

Other products propelled with CFCs that appear to fit the description of "noise horns" in section 610(b)(1) include sporting event noise horns, personal safety noise horns, wall-mounted industrial noise horns used as alarms in factories and other work areas, and intruder noise horns used as alarms in homes and cars. The availability of substitutes for these other noise horn products is similar to that of the marine safety noise horns. In fact, the same noise horn product may perform several of the uses listed above.

The use of CFC-12 in noise horns was not prohibited by the 1978 aerosol ban because the CFC served as the sole ingredient in the product and not exclusively as a propellant. However, Vermont and Minnesota have since passed laws banning the sale of CFC-propelled noise horns. As with the party streamers, EPA believes that the tax and the limits on supply have sufficiently

raised the price of CFCs so that it may already be more economical to use substitutes in noise horns.

EPA today proposes to ban all noise horns propelled with CFCs. EPA recognizes that some uses of noise horns are intended for safety. However, EPA believes that the current and potential availability of effective substitutes (including either the use of a different propellant or a slightly larger canister pending DOT approval of the smallest) underscores the statutory intent to prohibit the sale and distribution of *any* CFC-propelled noise horns.

3. *CFC-containing Cleaning Fluids for Noncommercial Electronic and Photographic Equipment*

Cleaning fluids are generally used to remove oxides, contaminants, dust, dirt, oil, airborne chemicals, fingerprints, and fluxes (the waste produced during soldering) from electronic and photographic equipment. These fluids can be comprised of CFCs, HCFCs, methyl chloroform or alcohols either alone or in mixtures.

EPA has identified several products that could be considered CFC-containing cleaning fluids for the uses described in section 610(b)(2). These products fall into four broad categories: solvent wipes containing CFC-113 (pre-moistened cloths), liquid packaging containing CFC-113 (applied with a cloth or other applicator), solvent sprays containing CFC-113 and/or CFC-11 (sprayed from a pressurized container through a nozzle or tube), and gas sprays containing CFC-12 (pressurized fluid released as a gas to physically blow particles from a surface). The specific intended noncommercial uses of these cleaning fluid products include tape and computer disk head cleaners, circuit and contact cleaners, film and negative cleaners, flux removers, and camera lens and computer keyboard dusters.

In identifying products that could be affected by the requirements under section 610(b)(2), EPA recognizes the specification made by Congress that only noncommercial uses of these cleaning fluids are affected by this particular prohibition. This distinction roughly mirrors the exemption to the 1978 aerosol ban granted by EPA for "nonconsumer articles used as cleaner-solvents, lubricants or coatings for electrical or electronic equipment" (See final rule March 17, 1978; 53 FR 11324.) However, as noted above, the 1978 ban applied only to aerosol propellant uses of CFCs. Other noncommercial CFC-containing cleaning fluids affected by section 610(b)(2), including non-aerosol pressurized dispensers, were not prohibited in 1978 because the CFCs were not technically acting as aerosol propellants.

Vermont and Oregon have passed laws banning the sale of non-commercial cleaning fluids containing CFCs. EPA believes that the tax and the limits on supply are providing a continual incentive for users of CFCs in noncommercial cleaning fluids to switch to alternatives.

EPA today proposes several options to implement the specific requirements of section 610(b)(2) to prohibit the sale or distribution of CFC-containing cleaning fluids for noncommercial use without disrupting the sale or distribution of these same cleaning fluids for commercial use. Since commercial and noncommercial photographic and electronic equipment are frequently the same products used in different contexts (e.g., the same computer could be used in either a commercial or a noncommercial setting) noncommercial use of cleaning fluids could be difficult to distinguish from commercial use at the point of sale. EPA's options are intended to address this potential difficulty. These options are discussed below individually, but are not necessarily mutually exclusive to the extent that two or more options could be coordinated.

The first option is to require that all CFC-containing cleaning fluids be sold in bulk (i.e., either in large cans or in cases of small cans). The rationale behind this option is that most commercial users of these cleaning fluids would likely require greater amounts than a noncommercial user, and that most noncommercial users would not likely buy bulk quantities due to the higher cost. A problem with this approach, however, is that some commercial users may only need small amounts of these cleaning fluids. EPA would not want to encourage waste of available CFCs or add unnecessarily to their cost where there may be a legitimate commercial need. Additionally, while the increased cost of bulk sales would be an incentive for noncommercial users not to buy the CFC-containing cleaning fluids, they would not in any way be prevented from doing so.

A second option is to prohibit the sale of CFC-containing cleaning fluids by outlets that are predominantly oriented toward noncommercial users. In this way, typical sources of these cleaning fluids for noncommercial users would no longer have them available. One national retail chain of noncommercial electronic equipment has already pledged to stop carrying CFC-containing cleaning fluids.

The chief problem with this option is developing a definition for "predominantly oriented to noncommercial users." While some retail stores would clearly fit this description, there would inevitably be situations where it is difficult to make a determination (e.g., a distributor that sells wholesale to commercial users but also has a window for retail sales). In addition, some commercial users might be purchasing their supplies from outlets that are generally thought to be for noncommercial users. Finally, as in the first option, there would be no mechanism to actually prevent a noncommercial user from buying the cleaning fluids.

A third option is to require either check-out signs in stores or warnings on the labels of all CFC-containing cleaning fluids indicating that they are intended for commercial use only. EPA believes that labeling will be an important aspect of its Stratospheric Ozone Protection Program and is currently developing a proposal to implement the labeling requirements in section 611 of the Clean Air Act, as amended. However, additional labeling could be costly and anecdotal evidence suggests that when consumers see a product labeled "for commercial use only" they may actually be more likely to purchase the product because they think that it is more effective that a standard consumer product. Once again, even with a label, a noncommercial user would still be able to buy the cleaning fluid.

A fourth option is to require recordkeeping by the distributors of CFC-containing cleaning fluids at the point of sale, documenting the fact that they were sold only to commercial users. EPA believes that this is the best approach to effectuate the required ban on the noncommercial use of these cleaning fluids. A paper trail of this sort already exists in many cases for tax purposes or as part of standard business practices. EPA's additional recordkeeping requirement could be small enough as not to present an unreasonable burden and broad enough to be fulfilled by the tax or business records where they are already kept.

For example, the information needed by EPA to verify that the sale of the cleaning fluid was to a commercial user would be the following: (1) Name of the person or business; (2) business address; (3) commercial identification number; (4) date of transaction; and (5) quantity of product purchased. The commercial identification number requirement could be fulfilled by one of several options, including a federal employer identification number [EIN], a state

sales tax exemption number or local business license number. Under this option, consumers without a commercial identification number would be unable to purchase CFC-containing cleaning fluids.

Nearly all states have sales tax and require recordkeeping for commercial-use and resale exemptions. The additional burden on distributors already keeping these records for tax purposes would be very small. The recordkeeping burden for those distributors operating in states without sales tax would be slightly greater, but EPA believes that it would still be minimal.

The distributor would be required to retain this information for each customer buying CFC-containing cleaning fluids. For the purposes of today's proposed rulemaking, EPA proposes to define the term "distributor" as the seller of a product to its ultimate consumer. This ultimate consumer could generally be considered either a commercial or noncommercial user of the product. Under today's proposed regulation, however, distributors would only be permitted to sell CFC-containing cleaning fluids to commercial users with one of the identification numbers specified above. Included in this definition would be both domestic distribution and distribution for export from the United States.

The information could be kept by the distributor as part of tax exemption paperwork, computer files or other existing business records. The recordkeeping required on a transaction-by-transaction basis would then be tallied and balanced against total purchases of CFC-containing cleaning fluids by the distributor as a compliance check.

Alternatively, the recordkeeping requirement could be limited to just the following: (1) Name of the person or business; (2) business address; (3) commercial identification number; and (4) date of first transaction. Under this approach, new records would not have to be completed at every transaction but commercial use information would have to be renewed every year in order to be considered valid. In other words, one record for each commercial buyer of CFC-containing cleaning fluids would fulfill EPA's proposed requirement for one full year after the information is recorded. Thus the recordkeeping burden on industry would be negligible. After one year, the record for each commercial buyer would have to be renewed in order to insure that the information is still accurate. Under either approach to this fourth option, the distributor would be required to keep the records on file for three years.

While requiring transaction-specific recordkeeping places a greater burden on industry than annual recordkeeping, eliminating transaction specific information could hinder the necessary compliance monitoring of the ban on noncommercial sales. EPA specifically requests comment on the appropriateness of including transaction-specific information in the recordkeeping requirement.

The total volume of CFCs used in the U.S. in 1988 for both commercial and noncommercial cleaning fluids for electronic and photographic equipment was approximately 3000 metric tons, or less than 0.8 percent of the total use of class I substances (weighted for ozone-depletion potential). EPA estimates that noncommercial sales represented a small but not insignificant fraction of this total 1988 use estimate and that total sales have dropped since 1988 due to the tax and the scarcity of CFCs caused by the phase-out regulations. As a result, the current sales of commercial cleaning fluids for electronic and photographic equipment are likely to be substantially lower than the 1988 level.

As with the party streamers and noise horns, EPA believes that the excise tax on CFCs combined with the scarcity created by the limits on production and imports have already raised the price of CFCs sufficiently so that it may no longer be economical to use them as cleaning fluids for noncommercial equipment. EPA is therefore proposing to implement the required ban through option four described above. However, EPA is especially interested in comments regarding the above options, including EPA's proposed recordkeeping requirement, or additional options for distinguishing between commercial and noncommercial use of CFC-containing cleaning fluids.

B. Other Class I Products

Section 610(b) requires EPA to identify and prohibit the sale or distribution of nonessential products releasing class I substances. The statute requires that, at a minimum, the prohibition apply to the above specified products and "other consumer products" releasing class I substances determined by EPA to be nonessential. Criteria for EPA to consider in determining whether a product is nonessential are listed in section 610(b)(3). Below, EPA first reviews the 1978 ban on aerosols using CFCs as propellants and then proposes an explanation of the criteria listed in section 610(b)(3), a definition of the term "product," and specific products EPA believes may fit the criteria.

1. Criteria Under the 1978 Aerosol Ban

EPA previously addressed the issue of nonessential products releasing ozone-depleting substances during the development of its 1978 ban on aerosol propellant uses of CFCs under the Toxic Substances Control Act (TSCA). Since the criteria developed to determine which products were essential and nonessential for that rule have already undergone public debate and discussion, EPA believes that it could be useful to review and make reference to them here.

The criteria used by EPA to determine which products should be exempted from the 1978 ban as "essential uses" were as follows: (1) Nonavailability of alternative products; (2) economic significance of the product, including the economic effects of removing the product from the market; (3) environmental and health significance of the product; and (4) effects on the "quality of life" resulting from no longer having the product available or using an alternative product. (See reference Essential Use Determinations—Revised, 1978.)

The background document supporting the 1978 ban states that when granting "essential use" exceptions, EPA believed that no single factor was sufficient to determine that a product or particular use was essential. The nonavailability of substitutes alone, for example, was not sufficient for EPA to exempt a product. The product also had to provide an important societal benefit to obtain an "essential use" exemption. If an alternative did exist, however, EPA decided that it was not necessary to make any judgements concerning the other criteria.

In other words, if EPA determined that an aerosol product had an available alternative, EPA did not need to make a determination on whether its purpose was or was not important in order to deny any petition for exemption for that product under the 1978 rule.

2. Criteria Under Section 610(b)(3)

Section 610(b)(3) instructs EPA to consider the following criteria in determining whether a product is nonessential: "The purpose or intended use of the product, the technological availability of substitutes for such product and such class I substance, safety, health, and other relevant factors." The statute requires EPA to consider each criterion but does not outline either a ranking or a calculus for comparing their relative importance. Nor does the statute require that any

minimum standard within each criteria be met.

EPA believes that all criteria specified in the Act should be considered together in determining if a product is nonessential. Further discussion of the definition of the term "product" and strategies for identifying nonessential products can be found in part III.B.3 below.

The criteria specified by section 610(b)(3) for the Agency to consider in determining whether a product is nonessential may interrelate and overlap to some degree. These criteria are discussed in turn below.

a. *The purpose or intended use of the product.* EPA proposes that this criterion address whether the product is sufficiently important so that the danger from the continued use of a class I ozone-depleting substance is outweighed, or sufficiently unimportant so that even a lack of available substitutes might not prevent the product from being considered nonessential. For example, Congress seems to consider that the purpose or intended use of medical products is important enough to preclude EPA from banning as nonessential any medical product without an "effective alternative" (see definition in part II.D.) but that party streamers are not important enough to warrant the continued use of CFCs regardless of the availability of substitutes.

However, the other examples of nonessential products cited by Congress for EPA to ban at a minimum do not provide as clear cut an illustration of this criterion. Noise horns, for example, are primarily used for safety reasons. Nor is the use of cleaning fluids on noncommercial photographic and electronic equipment generally considered to be "frivolous." EPA believes that these examples of nonessential products provided by Congress show that while it is critical to consider the purpose or intended use of a product along with the other specified criteria, Congress did not intend to limit EPA's authority solely on the basis of intended use.

A possible corresponding criterion from the 1978 aerosol ban is the effect on the "quality of life" resulting from no longer having the product available or using an alternative. As discussed above, the product had to provide an important societal benefit for EPA to grant an exemption from the 1978 ban even if the product did not have an available alternative. For the ban under section 610(b)(3), EPA could similarly consider impacts on the quality of life by a product using a class I substance, by the product's switch to a substitute chemical or process, or its removal from the market entirely.

EPA believes that the extent to which manufacturers of a product have already switched out of class I substances is a relevant indicator for this criterion. If, for example, the great majority of manufacturers have already shifted to substitutes, the use of a class I substance in that product could be considered by EPA as nonessential.

The distinction between a "nonessential product" and a "nonessential use of class I substances in a product" is also relevant to this criterion. While foam cushioning products for beds and furniture are not "frivolous", for example, the use of a class I substance in the manufacturing process of foam cushioning where substitutes are readily available could be considered nonessential.

b. *The technological availability of substitutes for such products and for such class I substances.* EPA proposes that this criterion addresses the existence and accessibility of alternative products or alternative chemicals for use in products releasing class I substances. EPA believes that the phrase "technological availability" includes both currently available substitutes (i.e., presently produced and sold in commercial quantities) and, in certain cases, potentially available substitutes (i.e., determined to be technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities). EPA recognizes, however, that the current availability of substitutes would be more compelling than potential availability of substitutes in determining whether a product is nonessential.

The corresponding criterion from the 1978 ban is the "nonavailability of alternative products." In its supporting documentation, EPA stated that this was the primary criterion for determining if a product had an "essential use" under the 1978 rule. EPA emphasized, however, that the absence of an available alternative did not alone disqualify a product from being banned.

With regard to the criteria for prohibiting nonessential products as required by the Clean Air Act, EPA today proposes to consider together each criterion specified in section 610(b)(3) for every product it proposes as nonessential. The availability of substitutes is clearly a critical criterion for determining if a product is nonessential. In certain cases, a substitute that is technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities, may meet this criterion. EPA believes that, where substitutes are available, the use of controlled substances could be considered nonessential even in a product that is extremely important.

It should not be construed that EPA necessarily advocates all substitutes that are currently being used in place of CFCs in the products EPA identifies as nonessential. Some manufacturers have switched from CFCs to substitutes which may have serious health and safety concerns. EPA will be looking carefully at the relative risks and merits of different substitutes for ozone-depleting substances when it develops regulations to implement section 612 (Safe Alternatives).

c. *Safety and health.* These two criteria could be interpreted as relating to the effects of the products releasing class I substances or their substitutes on humans and the environment. Included in this interpretation could be direct and indirect effects of product use, and the direct and indirect effects of alternatives, such as ozone-depletion potential, flammability, toxicity, corrosivity, global warming potential, energy efficiency, ground level air hazards, et cetera.

EPA does not propose to attempt to develop a formula or ranking factors for comparing these diverse safety and health issues. Such an exercise would be beyond the scope of this rulemaking. EPA proposes instead to consider the above issues relating to safety and health in a qualitative manner without attempting to draw conclusions about their relative importance.

This criterion would highlight, for the purpose of this rulemaking given its tight time frame, any specific safety and health issues relating to the product's use of class I substances and its alternatives of which EPA is currently aware. If any safety or health issues prevented a substitute from being used in a given product, EPA proposes that it would then consider that substitute to be "unavailable" at this time for that specific product or use. As EPA develops expertise in assessing the trade-offs of any potential environmental hazards posed by substitutes for ozone-depleting substances, it may revisit this issue for the purpose of banning other products or, as stated above, take action under section 612.

d. *Other relevant factors.* The one remaining criterion from the 1978 ban not yet addressed in today's proposal is the "economic significance of the product." Section 610(b)(3) does not

specify that EPA must consider the economic impact of banning a product, but the Agency believes that it is not precluded from doing so as an "other relevant factor."

In considering the immediate economic impact of banning the use of a class I substance in a product, EPA proposes to compare the cost of the possible substitutes and the cost of the class I substance, including the effects of the excise tax and the scarcity in the supply of class I substances created by the limits on production and importation under the Clean Air Act and the Montreal Protocol. EPA believes that in many cases the tax and supply limits have already provided a compelling incentive for manufacturers using class I substances to switch to substitutes. EPA also proposes to consider manufacturing costs associated with using substitutes or switching to alternative market lines. Finally, EPA proposes to consider the societal costs of eliminating the product altogether where relevant.

Another relevant factor apart from economic impact that EPA proposes to consider is the effect of state of local laws prohibiting the use of certain substances commonly used as substitutes for ozone-depleting chemicals. For example, Massachusetts, New Jersey, and California all specifically limit the use of methylene chloride which is used as a CFC-substitute for some flexible foam products. Other areas have limits on the general emissions of volatile organic compounds (VOCs). If the only available substitute for the use of a class I substance in a product—including both alternative chemicals and product substitutes—were a chemical whose use was prohibited in certain areas, EPA would consider that substitutes were unavailable for that product in those areas. As stated above, however, the lack of available substitutes does not automatically disqualify a product from being prohibited as nonessential.

3. Definition of the Term "Product"

Section 610(b) requires EPA to "identify nonessential *products* that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such *product*, or offering any such *product* for sale or distribution, in interstate commerce." (Emphasis added.) Section 610(b)(3) goes on to state that at a minimum the prohibition shall apply to "other [class I] consumer products" determined to be nonessential considering "the purpose or intended use of the product, the technological availability of substitutes for such product and such class I substance, safety, health, and other relevant factors." An understanding of the term "product" is especially important for making the required determinations based on the criteria in section 610(b)(3) and for developing a strategy for identifying which products may be nonessential.

The issue with regard to the definition of the term product is whether only individual items are affected by section 610 or if nonessential uses of class I substances are also affected. Despite the title of this section ("Nonessential products containing chlorofluorocarbons"), the statutory language suggests that any use that might "release class I substances into the environment (including any release occurring during manufacture, use, storage or disposal)" would be relevant to this requirement.

The term "product" could be narrowly defined as only individual items or even brand names as distinct from other brands with potentially different intended uses or available substitutes. For example, a 12-ounce can of CFC–12 could be used either as a noise horn or to recharge a car air-conditioner. Following the requirements of title VI, a noise horn would be a prohibited nonessential product but the commercial use of the same can for car air-conditioning would be permitted. Alternatively, one foam product manufacturer may have pledged to phase-out the use of CFCs from its manufacturing process while another manufacturer of a comparably used foam may not. As such, the scope of the term product could arguably be narrowed to such an extent that significant resources would be required simply to begin to analyze the nonessentiality of all individual types and brands of products releasing class I substances.

However, EPA believes that a broader definition of the term "product" is equally consistent with the statutory language and much more congruous with the purposes of the statute as a whole. First, the word "product" itself has a very broad definition in common dictionary usage. Second, the statutory mandate to consider the technological availability of substitutes "for such product and for such class I substance" clearly indicates congressional intent to focus on uses of class I substances in categories of products as well as individual products. Finally, the overall purposes of title VI to decrease use of ozone-depleting substances generally favors a broad interpretation of the ambiguous term "product."

Despite the potential differences between individual items, a broader definition of the term "product" also seems to make more practical sense. EPA simply does not have adequate resources given the short statutory rulemaking schedule to pursue the strategy of examining each of the hundreds of thousands of individual types and brands of products releasing class I substances. Nor would it make sense to do so even if EPA had infinite resources. Substitutes have already been identified for and are currently being used in entire categories of products which once used class I substances. Therefore, EPA today proposes that both the continued use of class I substances in product categories where alternatives are available and "frivolous" individual products can be considered nonessential. Thus, EPA proposes to ban nonessential uses of controlled substances under this section, allowing for essential use exemption for specific cases within the product categories where alternatives are in fact not available.

The two possible definitions of the term "product" discussed above are rooted in two of the criteria required by section 610(b)(3) for determining what is nonessential and lead to two distinct strategies for identifying products. The first criterion ("purpose or intended use of the product") suggests that narrowly defined individual items should be analyzed and if determined to be frivolous then they would be banned. The second criterion ("technological availability of substitutes") suggests that if substitutes are available for a product—or for the use of a class I substance in a category of products—then the nonessential use ought to be banned, even if the product category itself is not "frivolous" in its intended use.

EPA believes, as stated above, that all criteria specified in the Act should be weighed in determining if a product is nonessential, and today proposes that section 610 gives authority to ban both individual "frivolous" products and nonessential uses of class I substances in products that may or may not be "frivolous."

This interpretation of the definition of the term "product" in section 610(b)(3) to include "use" is consistent with the requirement specified in other parts of the same section. EPA believes that the required ban of CFC-containing cleaning fluids for noncommercial electronic and photographic equipment specified by section 610(b)(2) (see III.A.3. above)

demonstrates the intent of Congress to include specific *uses* in its definition of a nonessential product.

Furthermore, section 610(d) bans "(A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance," allowing for exemptions in specific cases. All aerosol and foam products are not identified as being nonessential, rather the use of class II substances in these two categories of use, aerosols and foams, is banned.

EPA's 1978 ban of products using CFCs as aerosol propellants under TSCA (see above and March 17, 1978; 43 FR 11318) also followed this same mechanism. This rule prohibited the manufacture, processing and distribution in commerce of all fully halogenated CFCs for "aerosol propellant uses," except for those EPA determined to be essential.

Finally, apart from the ban on nonessential products, section 608(a)(3) gives EPA additional authority to set standards for reducing emissions of controlled substances to their "lowest achievable level," including "requirements to use alternative substances." An alternative to banning the nonessential use of a controlled substance under section 610 would be to require the reduction of emissions for that use under section 608 to zero by mandating the use of substitutes where they are available.

EPA therefore concludes that under the authority of both sections 610 and 608, it is appropriate to ban nonessential uses of class I substances as well as nonessential products releasing class I substances. Both of these strategies are included within the meaning of the term "nonessential products" for the purposes of this rulemaking.

4. Proposed "Other" Products

The Agency today proposes to prohibit the sale and distribution of two broadly defined products where the emissions of certain class I substances can be reduced to zero based upon the availability of alternatives. These proposed product categories are: flexible and packaging foam using CFCs; and aerosols and other pressurized dispensers containing CFCs. In addition, EPA raises for public comment whether it should also prohibit the sale of residential fire extinguishers containing halons. Below, EPA defines each of these products and then presents an overview of how each product meets the criteria specified by section 610(b)(3) and discussed above in part III.B.2. More detailed analyses of the proposed "other" products to be prohibited are provided in the background documents accompanying this rulemaking. (See Docket A–91–39.)

In determining the initial list of which "other" products to prohibit under section 610, the Agency reviewed every major use sector (although not each individual product or brand) of each class I substance (CFCs, halons, carbon tetrachloride and methyl chloroform), including refrigeration and air conditioning, solvent use, fire extinguishing, foam blowing, and aerosol uses.

Refrigeration and air-conditioning, including mobile air-conditioning, represent the largest total use of class I substances in the United States (31.8 percent weighted by ozone-depletion potential (ODP) in 1987). Substitutes are currently being developed for all refrigeration and air-conditioning products. EPA believes that substitutes for some uses, like HFC–134a in mobile-air conditioners, are very close to being available. However, a range of potential substitutes for other refrigeration and air-conditioning uses are still in the process of being evaluated. EPA did not include prohibitions on the use of class I substances in refrigeration or air conditioning in this rulemaking because these uses are generally considered to be very important and conclusions on the appropriate substitutes are not anticipated to be available within the time-frame of this rulemaking. EPA plans to specifically address refrigeration and air-conditioning uses of class I substances under its upcoming regulations to fully implement the requirements of section 608 (Emissions Reduction).

Solvent uses of class I substances, including commercial electronics de-fluxing, precision cleaning, metal cleaning and dry cleaning, also represent a significant use level in the U.S. (21.7 percent weighted by ODP in 1987). Industry has identified potentially available substitutes for nearly all of the hundreds of thousands of products currently manufactured with class I solvents. For some specific products, including printed circuit boards, many companies have already pledged to phase-out CFC use well before 2000. These scheduled phase-out dates range from as early as the end of 1991.

EPA believes that each of the identified substitutes, including such alternative solvents as alcohols and HCFCs, and alternate processes as aqueous and semi-aqueous cleaning, "no clean" assemblies, controlled atmosphere soldering and hydrocarbon/surfactant cleaning, has advantages and disadvantages to consider. EPA also recognizes that the use of these substitute technologies may require capital or manufacturing process changes in order to ensure protection of human health and the environment. EPA is not addressing solvent use in today's proposed regulations because the sheer number of products and range of potential substitutes (each with specific technical and health and safety issues) makes it impossible for EPA to conclude that substitutes are currently available for those uses within the short statutory time-frame of this rulemaking. EPA will address solvent uses of class I substances under sections 608 and 612.

EPA examined the use of class I substances in foam products and is including flexible and packaging foam releasing CFCs in today's proposed rulemaking. EPA is not including insulating foams releasing CFCs. Unlike the other foam types which have currently available substitutes, the 1989 United Nations Environment Programme (UNEP) technology assessment estimated that only 10 to 50 percent of CFC use in insulating foams could be reduced by 1993. (See reference Technical Options Report.) Rigid insulating foams using CFCs were specifically exempted from the excise tax in 1990, and subject only to a reduced tax until 1994. The required ban on the use of class II substances in foam products in section 610(d) also specifically exempts insulating foams. As a result, EPA has focused on the flexible and packaging foams for today's proposed rulemaking and will address insulating foams under upcoming rules implementing sections 608 and 612.

The class I substances released by products identified by EPA in today's notice include both CFCs and halons. EPA did not identify any products releasing the other class I substances, carbon tetrachloride and methyl chloroform, in today's notice. EPA estimates that in the U.S. most carbon tetrachloride is consumed in the production process of CFCs. The production of CFCs and other class I ozone-depleting substances is already restricted by EPA's regulations implementing the requirements of section 604. EPA believes that is has adequate controls under its current regulations to limit the production of CFCs and does not today propose to further restrict the use of carbon tetrachloride in this process.

Methyl chloroform, on the other hand, is widely used as a solvent for metal cleaning, in adhesives and coatings, and in aerosols. Like CFC–113, methyl chloroform is used in hundreds of thousands of different products. EPA

believes that substitutes may be available for many of the current uses of methyl chloroform. Because methyl chloroform was not included in the original 1987 Montreal Protocol only limited information on specific uses and substitutes has been developed to date by industry and the Agency. EPA intends to collect more information on the uses of methyl chloroform, especially in aerosols and foams, in the near future. EPA may identify products releasing methyl chloroform as nonessential as part of its rules promulgated in time to meet the required 1994 ban on class II substances in aerosols and foams. EPA may also address the uses of methyl chloroform under sections 608 or 612.

EPA selected the products identified in today's notice for the following reasons: First, EPA believes that they all clearly fit the criteria specified by section 610(b)(3) based upon information and analysis the Agency already had or could obtain within the tight regulatory time-frame required by the statute. In fact, all the identified products are relatively well defined and have been the subject of prior federal or state level rulemakings or voluntary agreements to limit the use of ozone-depleting substances.

EPA also took into consideration the prohibition required by section 610(d) on certain products releasing class II substances which goes into effect in 1994. EPA is concerned about the potential environmentally adverse incentive of banning the use of class II substances in certain products in 1994 while permitting the use of the more harmful class I substances in the same products. Thus, the statutory prohibition in section 610(d) provided further direction in choosing products on which to focus at this time under section 610.

Today's proposal may not be the only determination that EPA will make regarding products releasing class I or class II substances. Due to the tight statutory time-frame, EPA did not have adequate opportunity to focus on more complex use sectors such as solvent use or on chemicals without a long history of regulation such as methyl chloroform. Should EPA propose further action, a quantitative assessment of costs and benefits as required by Executive Order 12291 would be performed.

EPA intends to revisit the issue of nonessential products in time to meet the required deadline for the ban in 1994 of class II products specified by section 610(d). To this end, as stated above, EPA plans in the near future to collect more information specifically on the uses of methyl chloroform and class II substances in foams and aerosols.

EPA believes that section 610 requires the Agency to include in the regulations, due by November 15, 1991, only those products or the use of class I substances in such products which it can conclude are nonessential. Where EPA can not at this time make such a determination, it is not required to include those products in the regulations. However, EPA believes it has continuing authority under sections 610 and 301 of the Clean Air Act to ban at any time in the future products that it concludes are nonessential.

In addition, EPA will further examine the uses of class I and class II substances in its upcoming rulemakings to implement the requirements of lowest achievable emissions and the use of safe alternatives in sections 608 and 612. Because Title VI provides several tools to regulate the use of ozone-depleting substances and their substitutes, the Agency intends to utilize whichever authority is most appropriate for limiting emissions in each use sector.

a. *Flexible and packaging foam using CFCs.* The foam plastics manufacturing industries, the markets their products serve, and their uses of CFCs are extremely varied. CFCs-11, -12, -113 and -114 have all been used to some extent in the manufacture of foam plastic products, which include building and appliance insulation, cushioning foams, packaging materials, floatation devices and shoe soles. According to UNEP's 1989 Flexible and Rigid Foams Technical Options Report, the foam industry used approximately 267,000 metric tons of CFCs worldwide in 1986, representing 25 to 30 percent of annual global CFC use. EPA believes that the level of CFC use in the U.S. for many foam types has decreased dramatically since 1986. For some foam products, the use of CFCs has already been completely phased out.

CFCs had been commonly used as blowing agents in the manufacturing process of many foam products because they have suitable boiling points and vapor pressures, low toxicity, very low thermal conductivity, they are non-flammable, non-reactive, and they had been cost effective. The excise tax levied by Congress in 1989 significantly raised the price of CFCs (except for use in the manufacture of rigid insulating foam, which was exempt from the tax in 1990 and is subject to a greatly reduced tax of approximately $0.25 per pound until 1994) and as a result foam manufacturers have switched to non-CFC substitutes in many areas.

Even before the tax went into effect several groups of foam manufacturers, including the Foodservice and Packaging Industry and the Polyurethane Foam Association, made significant voluntary strides in cooperation with the Agency and several environmental groups to eliminate or reduce the use of CFCs in their products ahead of the required phase-out timetable. In addition, one group has worked with the Agency to develop and make available an in-depth description of technical options to achieve these reductions. (See references Handbook for Eliminating and Reducing Chlorofluorocarbons in Flexible Foams.) Among the many commonly used substitutes for CFCs in flexible and packaging foam are HCFCs, hydrocarbons and methylene chloride. (See below.)

The 1989 UNEP report provides technical options for the entire foam industry by foam type, since each type has a distinct set of product and process application needs. For example, an important distinction exists between foam plastics where the cells are closed, trapping the blowing agent inside, and those with open cells which release the blowing agent during the manufacturing process.

For the purposes of today's proposed rulemaking, EPA defines "flexible and packaging foam" as the following foam types: polyurethane flexible slabstock and molded foams, rigid polyurethane packaging foam, polyethylene foam, polypropylene foam, and extruded polystyrene sheet foams. The included polyurethane foams are open celled thermosetting foams, where the blowing agent is mixed with chemicals which react to form the plastic. The other identified foams are closed cell thermoplastic foams, where the blowing agent is injected into a molten plastic resin which hardens upon cooling.

Other types of foam that could be interpreted as "flexible and packaging foam" include expanded polystyrene foam and polyvinyl chloride foam. However, the 1989 UNEP report indicates that CFCs were never used in the production of these foam types. As a result, EPA believes that it is unnecessary to formally prohibit the use of CFCs in these products and is not today proposing to include them. However, in the unlikely event that CFCs are used in the manufacturing process of these products in the future, EPA reserves the right to take action under this section to prohibit the use of CFCs in these products as nonessential.

EPA raised the possibility of banning flexible and packaging foams first in its December 14, 1987 Proposed Rule (52 FR 47489) and again in its August 12, 1988 Advanced Notice of Proposed Rulemaking (53 FR 30604). Since that time, several states including Oregon, Connecticut and Missouri have passed

laws banning certain types of flexible and packaging foams using CFCs. Of the foam types defining "flexible and packaging" foams, EPA believes that polyurethane flexible molded foam, rigid polyurethane packaging foam, polyethylene foam, polypropylene foam and extruded polystyrene sheet have already phased out of CFC use completely. EPA also believes that emissions of CFCs from the manufacture of the one remaining flexible foam type can be reduced to zero because manufacturers have largely switched out of CFCs to readily available substitutes and are currently exploring alternative technologies.

EPA is proposing to prohibit the sale and distribution of flexible and packaging foams using CFCs primarily because CFC use has already largely stopped in the proposed foam types following voluntary efforts and as a result of the tax. In addition, if CFCs were not prohibited in flexible and packaging foams, the self-effectuating ban in 1994 of foam products made with or containing class II substances could set up an environmentally harmful incentive for foam manufacturers who have not switched out of CFCs to continue to use them, or for those using HCFCs to switch back to CFCs.

(1) Purpose or intended use. Flexible and packaging foams have several "non-insulating" uses, including furniture and upholstery, transport and protective packaging, cushioning, protective wrap, padding, food containers, and floatation devices. EPA considers that the purposes of flexible and packaging foam as described above are not "frivolous." However, EPA believes that the fact that the great majority of manufacturers of these products have already switched out of CFCs to readily available substitutes indicates that the intended use of CFCs in this product area is nonessential.

(2) Technological availability of substitutes. Substitute options currently being used in flexible and packaging foams include increased foam density and/or water use combined with the following blowing agents: HCFC–22, hydrocarbons, blends of HCFC–22 and hydrocarbons, HCFC–142b, acetone, methyl chloroform and methylene chloride.

Other near-term alternatives available to eliminate CFCs in flexible foam include new polyol technology which increases softness with little or no CFC use and "AB" technology which uses formic acid to double the quantity of gas generated in the reaction of isocyanate with water.

Longer-term options for flexible and packaging foam that has not already switched out of CFCs could include HCFCs–141b, –123, and –124, and HFCs–125 and –134a.

(3) Safety and health. Methylene chloride is classified by EPA as a B2 (probable human) carcinogen with an Occupational Safety and Health Administration Permissible Exposure Limit (OSHA PEL) of 25 parts per million. Appropriate worker health and safety practices must be followed by flexible foam manufacturers in those states that allow the use of this chemical.

Hydrocarbons and acetone are flammable. Manufacturers must take special safety precautions including appropriate ventilation when using these substances. Hydrocarbons and acetone are also volatile organic compounds (VOCs) which can contribute to the formation of ground-level air pollution. States must consider VOC emissions in meeting requirements for State Implementation Plans (SIPs) to attain the ground-level ozone National Ambient Air Quality Standards.

HCFCs (particularly -141b) and methyl chloroform, although they have much less effect on stratospheric ozone than CFCs, do have measurable ozone-depletion potentials. (See listing notice 56 FR 2420; January 22, 1991.) These substances are limited elsewhere in title VI.

The formic acid used in AB technology creates carbon monoxide and has a Ph of 3, so it too requires special care in handling.

EPA believes that none of these health and safety issues described above are persuasive enough to preclude the prohibition of CFC-use in flexible and packaging foams under the requirements of sections 610 and 608. However, EPA does not necessarily advocate all substitutes currently being used by manufacturers in place of CFCs and EPA intends to carefully examine the issue of safe alternatives under section 612.

(4) Other relevant factors. The great majority of flexible and packaging foam manufacturers have already phased-out the use of CFCs. Voluntary agreements and the excise tax provide continuing incentives for those manufacturers still using CFCs to switch to substitutes. As a result, EPA anticipates that the future economic impact from this proposed prohibition will be minimal even for small businesses. (See Docket A–91–39.)

Some states limit the use of methylene chloride. Flexible foam manufacturers still using CFCs in these areas would be unable to use this particular substitute. EPA recognizes, however, that several substitute options apart from methylene chloride (e.g., modified polyols and water blown foam) are currently in use or are near-term substitutes for these foam types. EPA requests comment on the impacts of state limits on the use of methylene chloride.

(5) Proposed action. Based upon consideration of the above criteria, EPA believes that CFC use in the manufacturing process of flexible and packaging foam is nonessential and today propose to ban the use of CFCs in this product.

b. *Aerosols and other pressurized dispensers containing CFCs.* CFCs have been used extensively in aerosol products worldwide, mainly as propellants but also as solvents and as the active ingredient in products. In the mid-1970s the use of CFCs-11 and -12 in aerosols accounted for 60 percent of the total use of these chemicals worldwide. Due to mandatory and voluntary reduction programs in several countries, including the 1978 ban in the U.S., this use has been subsequently reduced. In 1986 aerosol use was still substantial, accounting for 300,000 metric tons, representing 27 percent of the global use of CFCs. In the U.S., 9870 metric tons were used in aerosols exempted or excluded from the 1978 ban, representing 2.5 percent of all class I substances (weighted by ozone-depletion potential (ODP)) in 1988.

For the purposes of today's proposed rulemaking, EPA is defining "aerosols and other pressurized dispensers containing CFCs" to include both propellant and non-propellant uses of CFCs. Propellant uses of CFCs were banned by EPA in 1978 except for essential uses. Non-propellant uses of CFCs, such as solvent use, were excluded from the 1978 ban. EPA has re-examined all of the products excluded from the 1978 ban as well as those specifically exempted from the 1978 ban. As EPA stated in its August 12, 1988 Advanced Notice of Proposed Rulemaking (53 *FR* 30804), several alternative propellants and delivery systems have been developed since the original aerosol exemptions were granted. In addition, many previously exempted or excluded products no longer use CFCs. (See reference Alternative Formulations.)

EPA is today proposing to ban CFCs in aerosols and other pressurized dispensers primarily because a variety of substitutes for CFCs are now widely available and currently in use. In addition, if CFCs were not banned in aerosols and other pressurized dispensers, the self-effectuating ban of aerosols and pressurized dispensers containing class II substances in 1994 could set up an environmentally harmful

incentive for manufacturers who have not switched out of CFCs to continue to use them or for those using HCFCs to switch back to CFCs.

(1) Purpose or intended use. CFCs have been used in exempted aerosol products and other excluded pressurized dispenser products as propellants, solvents and active ingredients. Intended use falls into the following product categories: lubricants and cleaning fluids for electric and electronic equipment, lubricants and cleaning fluids for aircraft maintenance, tire inflators, diamond grit spray, commercial dusters and freeze sprays, pesticides, mercaptan stench warning devices, pressurized drain openers, and whipped topping stabilizers. EPA considers that the purposes of these aerosols and other pressurized dispensers are generally not "frivolous." However, EPA believes that the fact that the great majority of manufacturers of these products have switched out of CFCs (see reference Background Document in Docket A–91–39) indicates that the intended use of CFCs in this product area is nonessential.

EPA is not today proposing to ban the following aerosols or other pressurized dispenser products containing CFCs which were exempted from the 1978 ban and are intended for medical uses: contraceptive vaginal foams, lubricants for pharmaceutical pill and tablet manufacture, metered dose inhalation devices (MDIs), and gauze bandage adhesives and adhesive removers. EPA is requesting comments on the essentiality of continued CFC use in these medical products.

(2) Technological availability of substitutes. Currently available substitutes for aerosols and other pressurized dispensers include: flammable hydrocarbons (predominantly propane and butane); other higher priced/special use flammable gases (dimethyl ether, HCFC-142b, HFC-152a); nonflammable compressed gases (such as carbon dioxide and HCFC-22 alone or in mixtures); solvent substitutes (methylene chloride and dimethyl ether/water mixtures); non-aerosol alternatives (other spray dispensers (finger pumps, trigger pumps, mechanical pressure dispensers) and non-spray dispensers (solid sticks, roll-ons, brushes, pads, shakers, powders, etc.)).

Potentially available substitutes for propellant and solvent uses of CFCs in aerosols and other pressurized dispensers include HCFCs-123, -124, and -141b and HFC-134a.

EPA recognizes that, as of the publication date of EPA's 1989 report on substitutes for aerosol uses of CFCs (see reference Alternative Formulations), a few aerosol products previously exempted from the 1978 ban may still have had problems identifying which substitutes for CFCs would be best for their specific use. EPA believes that since 1989, manufacturers have been working to identify substitutes for CFCs in all of their product areas. However, there are two specific products for which EPA does not currently have adequate substitute information to include them in the proposed ban on aerosols and other pressurized dispensers containing CFCs. These products are lubricants, coatings and cleaners using CFC-11 or CFC-113 for commercial electric and electronic uses and for aircraft maintenance uses, and release agents for molds using CFC-11 or CFC-113 in the production of plastic and elastometric materials.

As a result, EPA is not today proposing to prohibit the sale and distribution of any commercial products using CFC-11 or CFC-113 as lubricants, coatings or cleaning fluids for electrical or electronic equipment or for aircraft maintenance, or as release agents for molds used in the production of plastic and elastometric materials.

In connection with the exemptions from the 1978 ban, EPA previously imposed reporting requirements under 40 CFR 712.4 for those products which used a CFC propellant. These reporting requirements expired in 1982. Since that time the TSCA ban has functioned effectively without specific reporting requirements concerning the commercial uses of these substances. In general, EPA believes that, as a result of the 1978 ban, noncommercial use of CFC-containing lubricants, coatings, aircraft maintenance products and mold release agents is currently negligible. EPA has proposed recordkeeping requirements for commercial uses of CFC-containing cleaning fluids for electronic and photographic equipment but believes that no additional recordkeeping or reporting requirements are necessary to accompany the exemption of lubricants, coatings or aircraft maintenance products. EPA request comment on the need for additional recordkeeping requirements, the availability of substitutes and the essentiality of CFC use in these products.

(3) Safety and health. Hydrocarbons are flammable. Manufacturers must take special safety precautions including appropriate ventilation when using these substances. Hydrocarbons are also volatile organic compounds (VOCs) which can contribute to the formation of ground-level air pollution. States must consider VOC emissions in meeting requirements for State Implementation Plans (SIPs) to attain the ground-level ozone National Ambient Air Quality Standards.

HCFCs (particularly -141b) and methyl chloroform, although they have much less effect on stratospheric ozone than CFCs, do have measurable ozone-depletion potentials. (See listing notice 56 FR 2420; January 22, 1991.) These substances are limited elsewhere in title VI.

Methylene chloride is classified by EPA as a B2 (probable human) carcinogen with an Occupational Safety and Health Administration Permissible Exposure Limit (OSHA PEL) of 25 parts per million. Appropriate worker health and safety practices must be followed by aerosol and pressurized dispenser manufacturers in those states that allow the use of this chemical.

EPA believes that none of these health and safety issues described above are persuasive enough to preclude the identification of CFC-use in aerosols and other pressurized dispensers as a nonessential product under the requirements of section 610. However, EPA does not necessarily advocate all substitutes currently being used by manufacturers in place of CFCs. EPA intends to carefully examine the issue of safe alternatives under regulations to implement section 612.

(4) Other relevant factors. Propellant uses of CFCs have been banned under TSCA since 1978. The excise tax provides a continuing incentive for CFC aerosol and pressurized dispenser products either exempted or excluded from the 1978 ban to switch to substitutes. As a result, EPA anticipates minimal future economic impact from banning aerosols and other pressurized dispensers containing CFCs, with the possible exception of "diamond grit spray." This product was exempted from the 1978 ban for economic reasons. It can use HCFC-22 as a propellant but economic issues may still exist. (See Background Document.) The Agency requests comment on the economic impact of banning the use of CFCs in diamond grit spray.

(5) Proposed action. Based upon consideration of the above criteria, EPA believes that CFC use in aerosols and other pressurized dispensers is nonessential and today proposes to ban the use of CFCs in this product.

c. *Residential fire extinguishers containing halons.* EPA is today seeking comment on whether to include a ban on residential fire extinguishers containing halons in its final action under section 610. Halons are brominated compounds that exhibit exceptional fire fighting

effectiveness, but have ozone-depletion potentials that are significantly higher (3 to 10 times greater) than CFCs. They are electrically nonconductive, dissipate quickly leaving no residue, and have proven to be generally safe for human exposure in most fire situations. This unique combination of properties has led to their selection as the agent of choice for several fire protection situations, including: computer, communications, and electronic facilities; museums; engine spaces on ships and aircraft; and ground protection of aircraft. Portable fire extinguishers using halons had also achieved popularity in some countries for residential use, but according to manufacturers sales have decreased dramatically (70 percent) since 1987. Residential usage was estimated by the 1989 UNEP technical options report as ten percent of halon 1211 worldwide usage. In the U.S., residential use was estimated at seven percent (200 metric tons) of halon 1211 in 1985.

The product category of residential halon fire extinguishers includes two product types: Self-expelling factory sealed fire extinguishers with crimped valves containing halon 1211 alone or in mixture with 1301 (representing 90 percent of the residential market), and "noncommercial" portable refillable fire extinguishers with threaded valves containing halon 1211 (representing ten percent of the residential market). As with the cleaning fluids for electronic and photographic equipment, tax exempt identification numbers could be used to distinguish commercial from noncommercial sales of portable halon fire extinguishers.

EPA first raised the issue of restricting the sale of portable halon fire extinguishers for home use in an Advanced Notice of Proposed Rulemaking published August 12, 1988 (53 FR 30604). EPA raised this issue because at that time small halon extinguishers were relatively inexpensive and EPA believed that, despite their harmful effects on stratospheric ozone, halon units were purchased for applications (e.g., residential protection), where other fire extinguishing agents could have been used. Since 1988 several states, including Vermont, Oregon and New York, have passed laws banning the sale of residential fire extinguishers containing halons. In addition, Germany, Canada and, in the U.S., the South Coast Air Quality Management District, have all published notices proposing, or stated their intention to propose, to ban the sale of residential fire extinguishers containing halons.

EPA believes that halon substitutes will be available for most applications in the near future.

In response to the most recent data of increased ozone depletion released by UNEP and the World Meteorological Organization (WMO), the largest producer of ozone-depleting substances announced on October 22, 1991 that it will phase out its production of halons by year-end 1994. The company stated in its press release that "The data included in this recent assessment underscore the urgency for a more rapid and aggressive response." The company also stated that it is "committed to continue its development of alternatives and to work with customers in achieving a rapid and safe phaseout." EPA believes this announcement indicates that halon substitutes will be available for all applications in the near future.

In 1994 the excise tax on halons is scheduled to rise from $0.25 to $7.95 per pound for halon 1211 and $26.50 per pound for halon 1301 as a result of their extremely high ozone-depletion potentials (ODPs). EPA recognizes that this dramatic increase in the cost of using halons could raise the price of residential halon fire extinguishers such that, depending on the price elasticity of demand for these products, sales could cease on their own at that time.

If this expectation is correct, a prohibition on the sale of this product through rulemaking effective November 15, 1992 would effectively accelerate the phase-out of this product by 14 months. EPA has received information from industry representatives that it would be extremely disadvantageous to the industry to require a total phaseout of halon use in residential fire extinguishers prior to January 1, 1994.

EPA is seeking comment on whether the use of halon in residential fire extinguishers meets the criteria specified by section 610 for identifying a product as "nonessential," i.e., on the basis that effective substitute products are technologically available, considering the issues of safety and human health. EPA is also seeking comment on whether a ban is unnecessary because the expected increase of the excise tax on halons in 1994 may clear the market of this product in advance of the 2000 phase-out of all halon products. As such, EPA reiterates the request for comment on its interpretation of what factors should be considered in the definition of a nonessential product. (See subparts III.B.2 and 3.)

(1) Purpose or intended use. Halon 1211 (alone and in blend with 1301) can be used in portable fire extinguishers for the home or noncommerical vehicle (car, camper, boat, et cetera). EPA considers the purpose of residential fire extinguishers to be very important. However, EPA believes that the substantial downturn in the market for halon residential fire extinguishers, combined with the large imminent tax burden on these substances resulting from their extremely high ozone-depletion potentials, raises questions as to whether the intended use of halons in this product area is nonessential, and whether a ban is necessary.

(2) Technological availability of substitutes. Currently available substitutes include ammonium phosphate-based multipurpose dry chemical, powders and water. These product substitutes are rated for different types of fires. For example, multipurpose dry chemical is rated for all three types: A (wood), B (grease) and C (electrical); while residential halon extinguishers are only rated for B and C type fires. EPA requests comment on the effectiveness of halons and the substitutes on the different types of fires.

Dry chemical and powders differ from halons in their composition and clean up procedures. For example, while halons disperse to the ambient air after use, dry chemical and powder fire extinguishers may require some clean up in order to prevent corrosion of electronic equipment in the area.

EPA believes, however, that these extinguishers require similar routine maintenance. Dry chemical and powder units require routine checks to ensure that the substances have not caked. Similarly, recent EPA research indicates that halon fire extinguishers generally leak through the valve between 1.0 and 1.5 ounces per year. EPA believes that the reliability of all UL inspected residential fire extinguishers is very high, but that these products should be used and maintained according to manufacturers' instructions in order to retain maximum effectiveness.

As discussed above, and in the background document accompanying this proposed rule, EPA recognizes that no extinguisher is perfect for every possible fire situation. EPA is seeking comment on whether multipurpose dry chemical, powders and water are effective available alternatives to the use of residential halon fire extinguishers.

(3) Safety and health. EPA believes that fire protection is itself an important health and safety issue. As such, EPA requests comment on any health or safety impacts of restricting the

availability of residential halon fire extinguishers.

EPA is not aware of any safety or health problems with regard to the use of multipurpose dry chemical, powder or water. However, halon extinguishers can produce toxic gases, especially when used on very hot fires. The National Fire Protection Association (NFPA) suggests no minimum fire temperature for this hazard but EPA believes that the toxic results of halon decomposition will be greater on hotter fires. According to the NFPA, "their decomposition products can be hazardous . . . operators and others should avoid breathing the gases produced by thermal decomposition of the agent." (NFPA 10, Appendix A, Section A–2–1.)

(4) Other relevant factors. The cost of a residential halon extinguisher unit (average size 14 to 80 ounces) is significantly higher than the cost of other fire protection products, including multipurpose dry chemical unit (average size 32 to 80 ounces). For this reason, EPA believes that a ban of residential halon fire extinguishers would have little cost impact on consumers.

(5) Proposed action. EPA is not today proposing to ban the use of halons in residential fire extinguishers. EPA is instead seeking comment on whether halon use in residential fire extinguishers should be banned in EPA's final action implementing the requirements of section 610. EPA specifically requests comment on the extent to which other fire extinguishing agents (such as multipurpose dry chemical) are available substitutes to halon in residential units, in terms of effectiveness, relative health and safety issues and economic impact.

IV. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this proposed regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a formal regulatory impact analysis. EPA has instead prepared a background document (see reference Background Document in Docket A–91–39) which includes a qualitative study of the economic impact of this proposed regulation for each product identified as nonessential and prohibited from sale or distribution.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that the regulation, if promulgated, will not have a significant impact on a substantial number of small entities and has therefore concluded that a formal RFA is unnecessary. A qualitative treatment of potential impacts on small entities is included in EPA's background document accompanying this regulation.

EPA believes that most companies in the industries affected by this proposed regulation have already ceased using class I substances. In addition, EPA believes that the rising excise tax and the scarcity resulting from the required incremental reductions of these substances will provide a continually increasing incentive to switch to substitutes for those companies that have not already done so. The prohibition of sales to noncommercial users in the case of two products identified in today's proposed regulation (CFC-containing cleaning fluids and residential halon fire extinguishers) would still allow manufacturers to continue to market their products to commercial users with little or no impact. Finally, the full phase-out in the year 2000 of the production and import of class I substances provides a *de facto* ban on all products using these substances. This phase-out date may be accelerated by EPA under section 606 of the Clean Air Act, as amended.

For the purposes of this proposed regulation, EPA believes that identifying companies by Standard Industrial Classification (SIC) code is inappropriate because most of the affected products represent only a small fraction of the products within each SIC code. In addition, since most manufacturers have already ceased using class I substances, EPA was identifying only a few companies within each classification. Due to the small number of potentially affected industries, the definition of companies as large or small is based for the most part on the characterization of manufacturing process by industry contacts, rather than on a standardized measure such as number of employees.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. An Information Collection Request document has been prepared by EPA (ICR No. 1592.01) and is contained in the Docket to this rulemaking. A copy may be obtained by writing to the Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, SW. PM–223Y; Washington, DC 20460 or by calling (202) 260–2740.

Public recordkeeping burden for this collection of information is estimated to be 1.38 hours per affected distributor of commercial CFC-containing cleaning fluids, including time to maintain the list of commercial buyers and to prepare for and admit inspectors.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, U.S. EPA at the address given above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

V. References

United Nations Environment Programme. Aerosols, Sterilants and Miscellaneous Uses of CFCs: Report by the Technical Options Committee (June 30, 1989).

United Nations Environment Programme. Final Report of the Halons-Technical Options Committee (August 11, 1989).

United Nations Environment Programme. Flexible and Rigid Foams Technical Options Report (June 30, 1989).

United States Environmental Protection Agency. Alternative Formulations to Reduce CFC Use in U.S. Exempted and Excluded Aerosol Products (November 1989).

United States Environmental Protection Agency. Background Document on Identification of Nonessential Products that Release Class I Substances (July 1, 1991).
United States Environmental Protection Agency. Essential Use Determination—Revised: Support Document Fully Halogenated Chlorofluoroalkanes (March 17, 1978).
United States Environmental Protection Agency. Handbook for Reducing and Eliminating Chlorofluorocarbons in Flexible Polyurethane Foams (April 1991).

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

Title 40, Code of Federal Regulations, part 82, is proposed to be amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7671–7671(q).

2. Part 82 is amended by adding subpart C to read as follows:

Subpart C—Ban of Nonessential Products

Sec.
82.60 Purpose.
82.62 Definitions.
82.64 Prohibitions.
82.66 Nonessential products and exceptions.
82.68 Recordkeeping requirements for distributors of certain products intended for commercial use.

Subpart C—Ban of Nonessential Products

§ 82.60 Purpose.

The purpose of these regulations is to implement the requirements of sections 608 and 610 of the Clean Air Act Amendments of 1990 on emission reductions and nonessential products.

§ 82.62 Definitions.

(a) *Chlorofluorocarbon* means any substance listed as class I group I or class I group III in 40 CFR part 82, appendix A to subpart A.[1]

(b) *Commercial,* when used to describe the consumer of a product, means a person that has one of the following identification numbers—

(1) a federal employer identification number

(2) a state sales tax exemption number

(3) a local business license number and that uses the product for commercial purposes.

(c) *Consumer,* when used to describe a person taking action with regard to a product, means the ultimate commercial or noncommercial purchaser, recipient or user of a product.

(d) *Distributor,* when used to describe a person taking action with respect to a product:

(1) Includes distribution in commerce for export from the United States and

(2) Means the seller of a product to a consumer.

(e) *Product* means an item or category of items manufactured from raw or recycled materials which is used to perform a function or task.

(f) *Release* means to emit into the environment during the manufacture, use, storage or disposal of a product.

§ 82.64 Prohibitions.

Effective November 15, 1992, no person may sell or distribute, or offer for sale or distribution, in interstate commerce any product identified as being nonessential in § 82.66.

§ 82.66 Nonessential products and exceptions.

The following products which release a class I substance as defined in 40 CFR part 82, appendix A to subpart A [2] are identified as being nonessential and the sale or distribution of such products is prohibited under section 82.64—

(a) Any plastic party streamer or noise horn which is propelled by a chlorofluorocarbon, including but not limited to—

(1) String confetti

(2) Marine safety horns

(3) Sporting event horns

(4) Personal safety horns

(5) Wall-mounted alarms used in factories or other work areas

(6) Intruder alarms used in homes or cars

(b) Any cleaning fluid for electronic and photographic equipment which contains a chlorofluorocarbon including but not limited to liquid packaging, solvent wipes, solvent sprays, and gas sprays, except for those sold or distributed to a commercial user.

(c) Any plastic flexible or packaging foam product which is manufactured with or contains a chlorofluorocarbon, including but not limited to—

(1) Open cell polyurethane flexible slabstock foam

(2) Open cell polyurethane flexible molded foam

(3) Open cell rigid polyurethane poured foam

(4) Closed cell extruded polystyrene sheet foam

(5) Closed cell polyethylene foam

(6) Closed cell polypropylene foam

(d) Any aerosol product or other pressurized dispenser, other than those specified above, which contains a chlorofluorocarbon, including but not limited to household, industrial, automotive and pesticide uses, except—

(i) Contraceptive vaginal foams

(ii) Lubricants for pharmaceutical and tablet manufacture

(iii) Metered dose inhalation devices

(iv) Gauze bandage adhesives and adhesive removers

(v) Commercial products using CFC–11 or CFC–113 as lubricants, coatings or cleaning fluids for electrical or electronic equipment.

(vi) Commercial products using CFC–11 or CFC–113 as lubricants, coatings or cleaning fluids for aircraft maintenance.

(vii) Release agents for molds using CFC–11 or CFC–113 in the production of plastic and elastomeric materials.

§ 82.68 Recordkeeping requirements for distributors of certain products intended for commercial use.

(a) Every person who after November 15, 1992, sells or distributes the following products must keep records as defined in this section—

(1) Any cleaning fluid for commercial electronic and photographic equipment which contains a chlorofluorocarbon.

(2) [Reserved]

(b) A record is required to be kept on file by the distributor for each affected product purchased by the distributor and must contain the following information:

(1) Name of the person or business who supplied the product

(2) Date of transaction

(3) Quantity of product purchased

(c) A record is required to be kept on file by the distributor for each person who purchases the product from the distributor and must contain the following information:

(1) Name of the person or business

(2) Business address

(3) Commercial identification number

(4) Date of transaction

(5) Quantity of product purchased

(d) Records required under this section must be maintained by the distributor for a period of no less than three years.

[FR Doc. 92–945 Filed 1–15–92; 8:45 am]
BILLING CODE 6560–50–M

[1] 40 CFR part 82, appendix A to subpart A is proposed in the **Federal Register** issue of Monday, September 30, 1991 (56 FR 49580).

[2] See footnote 1 to § 82.62(a).

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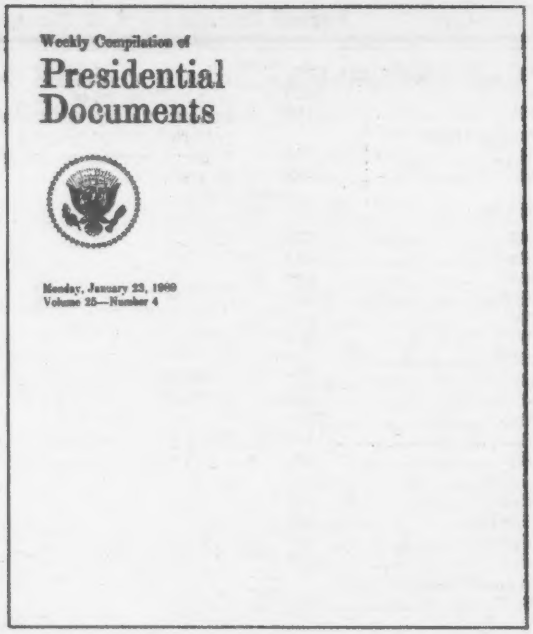
Administration of George Bush



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